IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No.301 of 2004
Date of decision: September 12, 2006.

Group 4 Securitas India (P) Ltd.

...**Petitioner(s)**

v.

Surya Pharmaceutical Limited

...**Respondent(s)**

Present: Shri Sanjay Kaushal, Advocate for the petitioner.

Shri S.S. Garg, Advocate for the respondent.

Surya Kant, J. (Oral)

This revision petition is preferred against the order dated November 15, 2003 passed by the Civil Judge (Junior Division), Chandigarh whereby an application under Section 8 of the Arbitration & Conciliation Act, 1996 moved by the defendant-petitioner has been dismissed.

The petitioner is a security agency and its services were hired by the plaintiff-respondent – company. Undisputedly, the parties entered into a contract dated July 29, 1999. Part IX of the said contract has bearing on the merits of this revision petition and the same reads as follows:-

"PART IX SETTLEMENT OF DISPUTE

Any disputes and differences except those covered under Clause (i) arising out of or relating to this contract including interpretation of its terms will be resolved through joint

> discussion of the authorized representatives of the concerned parties. However, if the disputes are not resolved by the joint discussions then the matter will be referred for adjudication to the arbitration as per the Arbitration Act."

Clause (i), whereby certain disputes have been excepted out of the arbitration clause, reproduced above, reads as follows:-

> "i) That in the event of any loss/damage to the client, as a result of any lapse on the part of Group 4 which will be established after a joint enquiry, the client can claim the same from Group 4 current insurance cover. The decision of the insurance company will be final and binding on the parties. Group 4 shall not in any event be liable for any indirect or consequential loss or loss of profits. If the insurance cover is lapsed or not enforceable then Group 4 will be responsible for loss of the client."

The respondent-plaintiff has filed a civil suit for recovery of Rs.4,56,870/- against the petitioner-defendant alleging that the employees of the defendant-petitioner, namely, the security guards, committed a theft in the factory premises located at Baddi and for the said lapse, the defendant-petitioner is liable to make good the losses allegedly suffered by the respondent-plaintiff. Upon receipt of notice in the said civil suit, the petitioner moved the application under Section 8 of the Arbitration and Conciliation Act, 1996 and relying upon Part IX of the contract entered into between the parties, it contended that the matter was referable to the arbitrator for adjudication. The learned civil court, however, has dismissed the aforesaid application on the ground that the dispute falls within the

exception clause (i) of the contract, therefore, the civil court has got jurisdiction to entertain the recovery suit.

Aggrieved, the defendant has preferred this revision petition.

The question which requires determination is as to whether or not the alleged theft, if any, committed by the employees of the petitioner-company, who were deployed as security guards in the factory premises of the respondent-plaintiff, tantamounts to "any lapse on the part of the defendant-petitioner". As may be noticed from Part IX of the Contract, both the parties have expressly resolved that the disputes and differences "except those covered under Clause (i)" arising out of or relating to this contract including interpretation of its terms will be resolved through joint discussion of the authorized representatives of the concerned parties, failing which the matter requires to be referred to the arbitrator for adjudication as per the Arbitration Act.

Clause (i) of the contract provides in unequivocal terms that if any loss/damage is caused to the respondent-plaintiff as a result of <u>any lapse</u> on the part of the defendant-petitioner, the respondent-plaintiff is entitled to claim the recovery of such loss/damage from the current insurance cover of the petitioner-company and if there is no current insurance cover or the same is not enforceable, then the petitioner itself is responsible to make good such loss.

The principle that "master shall always be responsible for the acts of his servant" is well known. An employer is liable civilly for torts committed by his employee in the course of the employment. The expression 'course of employment' has been given wide cover enough to include various kinds of acts though it appears to be equally well settled that

the liability of the master does not arise when the servant wholly departs from the course of the master's business.

Relying upon judgment of the Hon'ble Supreme Court in case of **P.Anand Gajapathi Raju & Ors. v. P.V.G. Raju (dead) and others**, (2000)4 SCC 539; and (ii) **Kalpana Kothari v. Sudha Yadav and Ors.**, (2002)1 SCC 203, as well as a judgment of the Delhi High Court in the case of **BPL Communications Ltd. v. Punj Lloyd Ltd.**, 108(2003) Delhi Law Times 198, Learned Counsel for the petitioner contends that Section 8 of the new Act, namely, Arbitration and Conciliation Act, 1966 is all of comprehensive and a mandatory nature. It is argued that once the arbitration clause has been brought to the notice of the civil court, it is imperative upon the court to refer the matter to the arbitrator and it is for the latter to decide as to whether or not the dispute falls within the ambit of arbitration clause. In this regard, specific reference has been made to the observations made by the learned Single Judge of the Delhi High Court in para 19 of the report where, after referring to the judgment of the Hon'ble Supreme Court in **P. Anand Gajapathi Raju & Others**'s case (supra) and **M/s Konkan Railway Corporation Limited & Anr. v. M/s Rani Construction Pvt. Ltd.**, JT 2002(1) SC 587, it is observed that, "existence and validity of arbitration agreement may be raised before Arbitrator under Section 16 of the Act and judicial authority is not required to go into it while deciding application under Section 8".

Though, there can be no quarrel on *ratio-decidendi* of the above cited judgments, however, the said ratio would be attracted only in a case where there is a dispute in respect of the very existence or validity of the arbitration agreement. In the case in hand, there is no dispute with

regard to execution of the contract between the parties and the arbitration clause, namely, Part IX contained therein. Similarly, there is no dispute that the disputes falling within the exception clause (i) are expressly excluded from the ambit of the arbitration clause. The question as to whether the theft committed by an employee shall amount to be "a lapse" on the part of the petitioner or not, of course, can be raised and would be answered by the civil court on the basis of evidence on record. Needless to say that if the civil court answers that question in favour of the petitioner, the respondent-plaintiff may have to rush to the arbitration clause only. However, at the threshold of the suit, the civil court cannot be pre-empted from going into these questions.

For the reasons aforementioned, I do not find any merit in this revision petition, which is accordingly dismissed, however, with liberty to the petitioner to raise its pleas at an appropriate stage.

No order as to costs.

September 12, 2006. [**Surya Kant**]
kadyan **Judge**